Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Reform of Access Charges Imposed by	)	
Competitive Local Exchange Carriers	)	

PRAIRIEWAVE TELECOMMUNICATIONS, INC.

PETITION FOR WAIVER

REPLY COMMENTS

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REPLY COMMENTS

PrairieWave Telecommunications, Inc. ("PrairieWave") respectfully submits this response to the comments filed with regard to its Petition for Waiver filed November 12, 2004 ("Petition"). PrairieWave believes it is significant that out of the more than 30 interexchange carriers ("IXCs") originating and terminating interstate minutes of use ("MOU") using its network,[1] only three filed comments: MCI, Inc. ("MCI"),[2] Sprint Corporation ("Sprint")[3] and Qwest Communications International, Inc. ("Qwest").[4] AT&T, the largest interstate IXC in the country and the most impacted by any decision, did not file comments.[5] MCI, the second largest IXC, actually supports much of PrairieWave's Petition. Sprint, the third largest IXC, merely embellishes the analyses

[1] Does not include an additional 14 cellular companies that terminate MOU using PrairieWave's network, which are unfortunately not impacted by this proceeding.
[2] *Comments of MCI, Inc.,* filed December 17, 2004 ("*MCI Comments*").
[3] *Opposition of Sprint Corporation,* filed December 17, 2004 ("*Sprint Comments*").
[4] *Comments of Qwest Communications International, Inc*., filed December 17, 2004 ("*Qwest Comments").*
[5] AT&T is the largest interstate IXC using PrairieWave's network with approximately 29% of the total interstate MOU on the network. MCI is the second with 16% of the traffic. Sprint and Qwest are relatively minor users with approximately 10% and 7%, respectively, of the interstate traffic.

presented by the FCC in what PrairieWave has referred to as CLEC Access Order 1[6] and CLEC Access Order 2.[7] Qwest, the smallest and newest IXC, files comments that are confusing, irrelevant and misleading.[8]

By seeking to introduce a Wyoming TELRIC cost study as relevant to the relief sought in the Petition, Qwest opens up an opportunity for the Commission to review and consider Qwest's own arguments and comments in support of a Verizon petition regarding pricing of UNE-P.[9] That docket, which deals with the determination of proper rate compensation for local loop elements, provides a number of important points that are directly analogous and supportive of PrairieWave in this Petition. In the *TELRIC Docket* Qwest persuasively argues:

- TELRIC is an inherently flawed cost methodology that does not properly consider a carrier's actual forward-looking costs.

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[6] *Access Charge Reform*, Seventh Report and Order, CC Docket No. 96-262, 16 FCC Rcd 9923 (2001) ("CLEC Access Order I").

[7] *Access Charge Reform*, Eighth Report and Order, CC Docket No. 96-262, 19 FCC Rcd 9108 (2004) ("CLEC Access Order II").

[8] Qwest is the ILEC in competition with PrairieWave in most of its markets. PrairieWave has proved to be a strong competitor in all of the markets. Qwest, as the ILEC, is the primary beneficiary of the current unfair interstate access rate situation.

[9] *In the Matter of Petition for Forbearance From the Current Pricing Rules for the Unbundled Network Element Platform*, WC Docket No. 03-157 (July 1, 2003) ("*Verizon Petition*"). This docket will be referred to herein as the "*TELRIC Docket*," including the following that will be cited in this response:

- The "*Verizon Petition*");
- "*The Negative Effect of Applying TELRIC Pricing to the UNE Platform on Facilities-Based Competition and Investment*," a special report that forms Attachment B to the *Verizon Petition ("TELRIC Report").*
- *Joint Petition of Qwest Corporation, BellSouth Telecommunications, Inc. and SBC Communications Inc. for Expedited Forbearance*, WC Docket No. 03-189 (July 31, 2003) ("*Joint Petition*"). The *Joint Petition* includes as Attachment A the *Verizon Petition* and incorporates all of the arguments and factual statements in the *Verizon Petition* into the *Joint Petition* by reference, whereby Qwest adopts all of the analysis contradicting most of its argument in this Petition and supporting PrairieWave's analysis in the CLEC interstate access rate area.
- *Comments of Qwest Corporation*, WC Docket No. 03-157 (Aug. 18, 2003) ("*Qwest TELRIC Comments*"). Qwest includes the *Joint Petition* and the *Verizon Petition* as Attachment A to these comments, and again adopts and incorporates them by reference.
- *Reply of Joint Petitioners*, WC Docket No. 03-157 and WC Docket No. 03-189 (Oct. 15, 2003) ("*TELRIC Reply Comments*").

- By not considering actual carrier forward-looking costs, the resulting rates are unreasonably low.

- Unfair low rates cause significant market distortions, favoring the incumbents' competitors.

- These market distortions send improper market signals that result in a lack of new market entry by facilities based competitors.

- The results are in direct contravention of the public interest in encouraging facilities based competition as expressed by the 1996 Telecommunications Act.

SUMMARY

PrairieWave believes that the case it makes for its waiver request is very persuasive based on the following key points:

- PrairieWave is required to interconnect with IXCs and to allow them to use its network to carry the IXCs' traffic.[10] This is not in dispute.

- PrairieWave is entitled to just and reasonable compensation for the use of its network. This is not in dispute.[11]

- RBOC average interstate access rates are not set by market forces and do not represent market rates.[12] This is not in dispute.

- The averaging process used by the large incumbent LECs in setting their rates results in unfairly low rates in small community areas.[13] This is not in dispute.

- PrairieWave's forward looking economic cost study for its regional operations results in rates that are higher than the incumbent rate. This is hardly surprising given the environment in which PrairieWave provides service. PrairieWave's cost study is not factually challenged and remains valid as the linchpin in its request for a just and reasonable rate.

- The artificially low access rates now imposed on PrairieWave by virtue of the incumbent rate caps causes substantial market distortions among which are the

[10] 47 U.S.C. § 251(a)(1); CLEC Access Order I, ¶ 59, fn 214.
[11] 47 U.S.C. § 201(b), 47 U.S.C. § 251(b)(5), and by implication, 47 U.S.C. § 252(d), which is the basis for forward looking interconnection cost pricing.
[12] Petition at 5-6; Exhibit D to the Petition, Anderson, Craig A., "*Network Access Rates for Competitive Rural Local Exchange Carriers: A Critical Examination of the CLEC Access Orders*" November 10, 2004, (hereinafter referred to as the "*Anderson Paper")*, ¶¶. 17-22 and the related footnotes; CLEC Access Order I, ¶¶ 35-44; CLEC Access Order II, ¶¶ 57-8.
[13] Petition at 6 (no. 6); *Anderson Paper*, ¶¶ 23-35 and related notes.

> unfair subsidization of competitors, the inability of PrairieWave to shift cost recovery to other subscriber revenue streams, the loss to PrairieWave of over 20% of its legitimate operating cash flow, and the inability of PrairieWave to continue to expand its competitive market entry activities. None of these factual results are in dispute.[14]

ANALYSIS

The PrairieWave Rural Market Region

PrairieWave operates in the eastern half of a semi-circle area lying within a 90-mile radius from Sioux Falls, South Dakota (a small community with a population of approximately 124,000[15]). By any reasonable definition, this is an isolated area, as even a cursory look at a map of the United States indicates.[16] PrairieWave's operations do not even begin to approach any significant population centers, and PrairieWave's entire business plan is to avoid these areas in favor of a sharp local focus on smaller communities. The city and the surrounding area are in the truest sense one of America's small community market regions.

PrairieWave's network configuration also attests to the rural nature of its operations. Its line density is approximately 6.67 lines per square mile of plant. By contrast, Qwest's average line density in South Dakota is approximately 17.59 lines per mile of plant while PrairieWave's ILEC affiliate has a line density of 5.89 lines per mile of plant.[17] This is

[14] Petition at 6; *Anderson Paper* ¶¶ 78-100 and related notes.
[15] Petition, Exhibit C.
[16] The nearest metropolitan areas are Omaha, over 180 miles ("miles" means road miles, not airline miles) to the south, and Fargo/Moorhead, almost 250 miles to the north. The nearest major population centers are Minneapolis/St. Paul, Minnesota, 270 miles to the northeast and Des Moines, Iowa, about 285 miles to the southeast. The nearest major metropolitan area, other than Minneapolis/St. Paul is Chicago, more than 550 miles to the east. To the west there is virtually no major population center until Denver, Colorado, more than 620 miles away.
[17] Petition, fn. 36. Qwest attempts to refute the more rural character of PrairieWave by doing an "urban to rural" comparison to show that PrairieWave is more "urban" than Qwest in South Dakota or Wyoming. *Qwest Comments* at 8-9. This is discussed more fully *supra*.

strong proof that PrairieWave's actual network costs and rates should be far closer to a small ILEC's rates than to Qwest's averaged interstate rate.

Thus, PrairieWave's Petition unique and provides in large part the special facts necessary to support its requests. Qwest's suggestions to the contrary[18], these special facts also allow the Commission to grant the waiver without setting an uncontrollable precedent for other CLECs, since there are very few other regional areas in the United States with the same or similar combination of geographic and demographic factors.[19] MCI supports this analysis stating, "MCI agrees with PrairieWave that it is in the unique situation of providing service to a limited number of customers in Sioux Falls and that to apply the rural exemption limit of 50,000 inhabitants to this particular situation would be unjust."[20]

The CLEC Access Order Decisions

In questioning PrairieWave's request, all three commenters merely remind the Commission of its prior CLEC Access Orders developing a "bright line" standard based on averaged incumbent rates.[21] However, no commenter addresses the numerous reasons why the "bright-line" analysis should not determine the outcome in PrairieWave's situation. The CLEC Access Orders and the commenters fail to fairly consider:

[18] *Qwest* Comments at 2, 4 and 5. Qwest makes no showing about the number of other rural CLECs similarly situated to PrairieWave and cannot do so for the reasons stated above. Moreover, if there are other CLECs similarly situated to PrairieWave, they should make a similar petition, for the current situation for PrairieWave is both illegal and harmful to the public interest.

[19] Qwest's observation that there are many carriers that serve both metropolitan and rural markets is hardly evidence that all of these other carriers are similarly situated in geographic and demographic areas similar to PrairieWave. *Qwest Comments* at 4. PrairieWave serves no metropolitan area and as noted above, its operations are located hundreds of miles away from the nearest one.

[20] *MCI Comments* at 3.

[21] *MCI Comments* at 1-3; *Sprint Comments* at 3-4; *Qwest Comments* at 2.

- The lack of CLEC, especially rural CLEC, cost study information available to the Commission at the time of its prior decisions.[22]

- The urgency underlying the Commission's earlier orders that related to metropolitan-based CLECs abusing the tariff scheme then in place without regard to their actual costs, a problem that is not present in PrairieWave's situation.[23]

- The fact that the incumbent interstate access rates are not set by market forces,[24] and that a "market factor" analysis actually supports PrairieWave's position.[25]

- The fact that incumbent average rates are inappropriate for rural networks.[26] MCI expressly agrees with this point.[27] Qwest argues strenuously that actual network costs of the carriers that own and operate the network should form the basis for access rates.[28]

- The Commission's prior decisions favoring the fairness and accuracy of forward looking costs studies based on actual costs over the application of averaged rates.[29]

- The Commission's own reservations about the impacts of its CLEC Access Orders in rural areas and the appropriateness of considering waiver petitions.[30]

Simply referencing the Commission's prior orders and quoting brief excerpts of its conclusions out of context is not sufficient to counter PrairieWave's Petition for Waiver. The failure to engage the detailed analysis set forth in the *Anderson Paper* makes the opponents' comments largely ineffective in furthering an analysis of the issues, let alone supporting a decision to deny PrairieWave's request.

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[22] Petition at 6 (no. 4); *Anderson Papers* ¶¶ 2, 59, 65-6. This is a significant point that is ignored by all of the commenters.

[23] *Anderson Papers* ¶¶ 51-55 and the notes thereto. Again, no commenter denied this analysis, nor could they inasmuch as it is specifically laid out by the Commission itself in its CLEC Access Orders.

[24] *Anderson Papers* ¶¶ 19-22, 36-37, 57-60, and the notes thereto.

[25] *Anderson Papers* fn. 110. No commenter attempts to argue or demonstrate that a market structure analysis would not support PrairieWave's request, whereas PrairieWave discusses this exact point and argues persuasively that it supports PrairieWave's claim.

[26] *Anderson Papers* ¶¶ 23-27, 29-35, 67-73, and the notes thereto.

[27] *MCI Comments* at 3-4, citing prior Commission language analyzed in detail by the *Anderson Paper*, *Id*.

[28] *Qwest TELRIC Comments* at 4; *Joint Petition* at 2-3; *Verizon Petition* at i, 2-4, 6, 13, 19.

[29] *Anderson Paper* ¶¶ 43-47 and the notes thereto. As will be seen below, this position is also strongly supported by Qwest. *Joint Petition* at 6.

[30] *Anderson Paper* ¶¶ 104-108 and the notes thereto.

The PrairieWave Cost Study

The commenters take several different approaches to the PrairieWave cost study: However, the arguments lack substance and in the end, PrairieWave's cost study is left standing as unrefuted proof that a waiver should be granted.

Prior Commission Decisions. MCI characterizes the use of PrairieWave's cost study as a "step backwards," in rural CLEC rate regulation, citing the prior Commission CLEC Order findings as *per se* conclusive in this matter.[31] Sprint also characterizes the PrairieWave cost study as "irrelevant" based on the same analysis as MCI - the allegedly conclusiveness of the Commission's prior decisions.[32] Qwest's language simply states, "Granting the requested waiver would conflict with most of the Commission's policy objectives."[33]

The Excess Cost Argument. Sprint asserts that PrairieWave's cost study involves "excess" costs that should be recovered through additional end user charges.[34] Qwest makes the similar assertion that granting PrairieWave's petition "…would allow PrairieWave to pass on extra charges to IXCs and their end users."[35]

The "excess cost" or "extra charge" argument by both parties is misplaced because it begs the question of the definition of "excess costs" or "extra charges." Simply because a forward looking cost study results in higher rates does not mean that the study is based on "excess" or "extra" cost. Such an unsupported assertion is nonsensical on its face given the average cost nature of the Qwest and Frontier incumbent interstate rates that include the much lower costs of serving large metropolitan areas.

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[31] *MCI Comments* at. 3.
[32] *Sprint Comments* at 3-4.
[33] *Qwest Comments* at 7.
[34] *Sprint Comments* at 3.
[35] *Qwest Comments* at 7.

PrairieWave's filing is based on its actual forward-looking economic costs, and MCI, Sprint and Qwest do not dispute this fact. The cost study was prepared by an outside expert consultant and only includes the actual costs of constructing and operating PrairieWave's established network on a forward-looking basis.[36] PrairieWave is an established, mature, facilities based company, with a CLEC service history going back to 1997, the birth of the CLEC industry following the 1996 Telecommunications Act.

Further, Sprint and Qwest do not deny the PrairieWave analysis proving that it is unable to recover appropriate costs from its customers, not because its operations are inefficiently burdened with "excess" costs, but because the artificially low incumbent access rate imposed by the Commission's CLEC access orders unfairly subsidizes competitors like Qwest and the other IXCs, allowing them and alternative local service providers, like cellular and VoIP companies, to keep an artificially low cap on competitive local service rates and related subscriber line fees. PrairieWave has no way to shift any of its costs, including its actual network costs, to other revenue streams.[37]

Qwest attempts a convoluted, but irrelevant, analysis to demonstrate unreasonably high PrairieWave local loop costs.[38] Qwest asserts that PrairieWave's costs exceed its local exchange rates, using arbitrary assumptions such as "typical switch usage rates" and "typical local transport rates" that have no demonstrable relation to PrairieWave's actual statistics.[39] Qwest also assumes, without any proof, that PrairieWave's CLEC operation has loop costs similar to its ILEC brother to somehow conclude that the local loop is

[36] It excludes the portion of PrairieWave's network costs that are unrelated to interstate long distance access, including the portions used for local loop service, cable television services, and data services.
[37] *Anderson Paper* ¶¶ 79-84 and notes thereto.
[38] *Qwest Comments* at 9.
[39] *Qwest Comments* at 10, and fn. 24.

roughly $100 per month per line.[40] Qwest knows better. This entire line of analysis is erroneous and irrelevant for several reasons:

- The factual assumptions are all hypothetical speculations with no basis in the real facts in PrairieWave's situation. PrairieWave's cost study refutes this by clearly demonstrating to the Commission the appropriate interstate access rates based on the Commission's own forward-looking economic cost analysis.[41]

- The analogy based on the PrairieWave ILEC network information is irrelevant since (1) the CLEC network is much newer than the ILEC network, having been engineered and constructed entirely after 1996, (2) the CLEC network uses hybrid fiber optic/coaxial/copper plant designs with different electronic and optical components than the ILEC network, (3) the CLEC's network is only built within the city limits of the communities that have granted PrairieWave a cable franchise, and does not extend out to the high cost rural farmsteads as does the ILEC network, and perhaps most importantly, (4) the CLEC network is used to provide multiple services including cable television and high speed data services, as well as local and long distance service. It is therefore not relevant that PrairieWave's CLEC local connection costs are not covered by its local service charges, since this same connection produces numerous other revenue streams. Qwest uses an antiquated RBOC industry perspective in its comments that focuses only on local service and totally misses the fundamental economics of PrairieWave's business model.[42]

- PrairieWave is under no regulatory requirement to recover all of its network costs from its local charges. In fact, PrairieWave's argument is partly based on the fact that it is entitled to recover fair and reasonable revenue from third parties for the use of its network to originate and terminate interstate long distance calls. This fact is also clearly known to Qwest and avidly adopted by it in the *TELRIC Docket*.[43]

The New Market Entry Evidence

Qwest is unable to decide whether to use PrairieWave's business activities as proof that overbuilder competition is in fact robust and highly effective or wastefully

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[40] *Id.*
[41] *Anderson Paper* ¶ 83, the point is made that the common carrier local loop costs have been removed from the access rates proposed by PrairieWave. Qwest somehow missed this; therefore its entire analysis of PrairieWave's local service charges and costs is simply irrelevant.
[42] This very point is adopted by Qwest in the *TELRIC Docket*. *Verizon Petition* at 21-23, where the multiple use of new networks is touted as a significant advantage to consumers from the introduction of new facilities-based competition.
[43] *Verizon Petition* at 4-12, the right to fair and reasonable compensation for network access is analyzed at length.

uneconomic. Qwest cannot claim it is uneconomic to enter new markets under the existing access rules as proof that PrairieWave's existing operations are uneconomical;[44] but then argue that PrairieWave's actual costs should not be considered in setting its access rates. Such an assertion contradicts Qwest's argument before the Commission in the *TELRIC Docket* that actual forward-looking costs are the only fair and reasonable basis to determine access charges.[45] Qwest then contradicts itself again by arguing that not only is small market entry economical; it is in fact, rampant throughout South Dakota.[46]

More importantly Qwest ignores the fact that PrairieWave reasonably anticipated at the time of construction (1997-2000) it would be able to recover its forward-looking network access costs through the appropriate network specific access rates.[47] Injured by the position taken by the Commission in the CLEC access orders,[48] PrairieWave now cannot attract financing for a business plan allowing the expansion into additional rural markets.[49] According to Qwest in the *TELRIC Docket*, the curtailment of new market competitive entry is a serious public policy problem under the existing rules.[50] PrairieWave agrees.

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[44] *Qwest Comments* at 8.

[45] Access charges "were designed as a way to help pay for the underlying network infrastructure;" that the "underlying facilities provider is entitled to the per-minute access charges…[to] ensure that the underlying network provider receives the payments that were intended to support the ongoing operation and maintenance of the network;" and that it was the "expressed intent of Congress" to maintain an access charge regime to recover costs of the local network (citing 47 U.S.C. § 251(g)). *Verizon Petition* at 14-15. S*ee also* the analysis in the *Anderson Paper* ¶¶ 23-35 and accompanying notes.

[46] *Qwest Comments* at 11

[47] *Anderson Paper* ¶¶ 84, 94, and the accompanying notes.

[48] *Id.* ¶¶ 56, 58 and the accompanying notes.

[49] *Id.* ¶ 84, and fn. 122.

[50] "Moreover, the *Verizon Petition* is replete with data and analysis substantiating the conclusion that the application of the current TELRIC rules…has impeded the development of effective facilities-based competition, thereby causing severe harm to the entire telecommunications sector and hampering economic growth." *Qwest TELRIC Comments* ¶ 1; *TELRIC Reply Comments* at 2. "The *Verizon Petition* provides extensive evidence of the nationwide decline in CLEC infrastructure investment…. *Once more, this*

The Qwest Wyoming TELRIC Study

Qwest then asserts, that PrairieWave's "actual costs should not necessarily be higher than those of Qwest, the competing ILEC."[51] To "prove" this assertion, Qwest embarks on an analysis of its Wyoming TELRIC costs, and here the contradictions between the *Qwest Comments* filed in this proceeding and Qwest's advocacy in the *TELRIC Docket* cited above are difficult to understand. However, Qwest's comments in the *TELRIC Docket* actually explain why the Wyoming TELRIC study produces such disparate results when compared to PrairieWave's own cost study and why this TELRIC approach must be rejected.[52]

Even if a Wyoming cost study was relevant, the suggested use by Qwest of a TELRIC study is inapposite for the simple reason that the TELRIC model was designed for local service element pricing[53] and, even in that context, is woefully inaccurate, resulting in

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phenomenon is also clearly present within the Qwest territory." *Qwest TELRIC Comments* at 5 (emphasis added). "[T]he application of TELRIC…has led to severe market distortions and opportunities for regulatory arbitrage that have had a singularly negative effect on the development of effective competition *in Qwest territory*." *Qwest TELRIC Comments* at 7 (emphasis added). "The detrimental consequences of the existing TELRIC methodology include…a *decline in infrastructure investment among both ILECs and competitive local exchange carriers ("CLECs")* that has paralleled the dramatic rise in UNE-P usage; and curtailed CLEC use of, and investment in, their own facilities in favor of increased reliance on UNE-P. Moreover, *the facts clearly demonstrate that the application of the existing TELRIC rules…has had a profoundly negative effect on the development of facilities-based competition*, which the Commission's unbundling rules seek to promote." *Joint Petition* at 3-4 (emphasis added). *See also, Joint Petition* at 4, and fn 11.

[51] *Qwest Comments* at 8.

[52] Qwest's entire Wyoming analysis is irrelevant for several reasons: (1) PrairieWave does not operate in Wyoming. (2) A comparison of operations based on an analysis of "MSA potential urban lines" is problematic because, (a) there is nothing in Qwest's Exhibit A to distinguish urban from rural or urban-MSA from non-MSA, (b) the "potential" urban lines analysis may be a relevant measure of network comparability where an incumbent serves 100% of the market - the appropriate measure of network comparability today is lines served per mile of plant (*see* Petition fn 36), (c) PrairieWave's network also covers parts of Minnesota and Iowa – whose large metro areas are not included, and (d) the comparison is between lines served by Qwest and the populations (whether a customer or not) of towns where PrairieWave is present – how population equates to lines is not apparent. (3) Presenting a Wyoming specific study, prepared under Wyoming rules, does not address the interstate access rating problems cited by PrairieWave.

[53] Qwest acknowledges this fact in its SEC filings stating that the FCC is doing a "comprehensive review" of the TELRIC pricing rules, which are the basis for setting UNE.prices Qwest Communications

rates that are unfair and unreasonable – it is a "flawed methodology."[54] No wonder the Wyoming TELRIC study results in much lower rates, *it systematically understates the true network costs*.[55] These are not PrairieWave's conclusions (though PrairieWave agrees with them); they are Qwest's own advocacy to the Commission.

There is much more that PrairieWave could cite from the *TELRIC Docket* criticizing the TELRIC approach, and Qwest's strong support of these principles makes one wonder why its comments in this proceeding are not fully supportive of PrairieWave's position.[56]

The PrairieWave Business Plan

Qwest suggests that this Petition is the result of "a high-cost CLEC that is scrambling to figure out a way to have the IXCs salvage a poorly-conceived or badly-executed business plan."[57] Such comments are unnecessary and untrue. A cursory review of the *Qwest 2003 SEC Report*, preceding annual SEC reports, reported proceedings before multiple utility regulators, and the business and industry press certainly indicates that Qwest has no standing to launch unsupported, gratuitous attacks on the financial integrity of any other company in the industry.

PrairieWave Cost-Base Rate – Impact on IXC Competition.

Sprint and Qwest assert that granting the higher access rate sought by PrairieWave will negatively impact the participation by IXCs in PrairieWave's markets.[58]

International, Inc., Form 10K, Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, for the fiscal year ended December 31, 2003, at 16. ("*Qwest 2003 SEC Report*").

[54] *TELRIC Reply Comments* at 2.

[55] "The evidence, much of which was national in nature, showed that the application of TELRIC …has produced a system of uneconomic arbitrage *by grossly understating ILEC costs*." *TELRIC Reply Comments* at 2 and fn 4 ("*That is, Qwest's own financial information and analysis confirms that TELRIC understates true network costs"*) (emphasis added).

[56] Interestingly, Wyoming is cited by Verizon and Qwest as one of the states that has abused its regulatory power in setting rates through the improper use of TELRIC. *TELRIC Report* at 12-13.

[57] *Qwest Comments* at p. 10.

[58] *Sprint Comments* at 5; *Qwest Comments* at 7.

Sprint asserts that higher access rates "will raise end user long distance calling rates as well."[59] These assertions are unsupported by any facts. AT&T, MCI or any of the other 30 IXCs using PrairieWave's network for interstate calls do not assert that the higher rates will pose a problem for their operations or would be passed on to their customers.[60] The economic impact on the IXC industry is *de minimus.*

There will be no increase because the competitive long distance industry will not allow an increase. This is the same circumstance experienced by PrairieWave in its inability to shift network access cost recovery to other revenue streams.[61] It points out what is really at stake in this proceeding - low access rates are operating as a windfall for the IXCs, including Qwest.[62] They are profiting at PrairieWave's expense, and unfairly so because of the impact of incumbent rate averaging on PrairieWave's rate caps. While the financial impact to Sprint and Qwest may not be significant to them, the combined impact to PrairieWave from all 30+ IXCs is significant to its operations, representing approximately 20% of its operating cash flow. This is the uneconomic practice that must be stopped, and granting PrairieWave's waiver request is the way to accomplish that.

The Rural Exemption NECA Rate

Sprint has difficulty reconciling PrairieWave's calculation of the applicable NECA rate with its own calculation.[63] Upon review and recalculation, PrairieWave agrees with Sprint that the NECA rate is more appropriately $.026611 per MOU. However, the resulting differential between the cost-based rate supported by the study and the surrogate NECA rate does not eliminate or resolve the basic problem. To afford

[59] *Sprint Comments* at 3.
[60] PrairieWave is the main long distance provider in its markets with prices above its proposed access rate.
[61] *Anderson Paper* ¶¶ 79-84 and related notes.
[62] *Anderson Paper* ¶¶ 85-86 and 95-100 and related notes.
[63] *Sprint Comments* fn 4.

PrairieWave a just and reasonable rate, the Commission should approve the tariffing of the cost-based rate.

CONCLUSION

For the foregoing reasons PrairieWave believes it has met its burden qualifying it for a waiver of the Commission's rules governing access charge reform for CLECs. PrairieWave respectfully requests that the Commission either review and approve the cost study provided with this filing and allow PrairieWave to tariff the access charges supported by the study, or allow PrairieWave to qualify for the rural exemption and tariff the appropriate rates set by NECA.

Respectfully submitted,

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